* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.REV. 577/2005

Date of decision : 23.4.2007

S.D.SHARMA ..... Petitioner
Through Mr. Anurag Jain, Advocate

versus

STATE (NCT OF DELHI) ..... Respondent
Through: Mr. V.K.Malik, Advocate

CORAM:
Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Mr. Justice S. Ravindra Bhat: (Open Court)

1. This revision petition challenges an order dated 24.5.2005 of the Special judge, framing charges for commission of offences under Section 420/468/471 IPC and Section 13(1)(d) of the Prevention of Corruption Act, 1988. The petitioner was at the relevant time, in August, 2000 working as Executive Engineer of the Irrigation and Flood Control Department, Government of NCT of Delhi. Other co-accused were also working at that time. A contract for removal/transport of garbage from the Nangal Train Site to Bhalsawa Sanitary Landfill was awarded to Shri S.R.Sharma accused contractor. It was alleged that after execution of the agreement substantial payment of

Rs. 4,45,242/- was made to the contractor. The contractor claimed that 647 trips were undertaken by the trucks in furtherance of the contract.

2. It was alleged that out of 26 vehicles 10 were claimed to have made 387 trips. The owners of those vehicles, in the statements recorded, denied use of such vehicles for shifting/transportation work. It was also alleged that another 104 trips were claimed by 6 trucks which were found not to be operating from the given address. Only 118 trips out of the 647 trips for payments were released, could be verified as genuine. It was also alleged that out of the 647 ships, 529 prepared falsely. All of them were seized. The petitioner had approved a bill for Rs. 5,07,120/- to release Rs. 4,45,250/- to the contractor. It was alleged that this was done in connivance with the contractor and the other co-accused to benefit the former and also without conducting any test checks.

3. By the impugned order the Special Judge proceeded to frame charges against the co-accused and the petitioner.

4. Mr. Sandeep Sethi, learned senior counsel contended that the case was registered in August, 2000 when the petitioner's name was nowhere mentioned. It was only at the stage of filing the charge sheet after his retirement, that his name was included. Counsel submitted that the trial court failed to consider that the petitioner as Executive Engineer was responsible to verify only 10% of the measurement recorded by subordinates of every alternate bill at his headquarters. Therefore there was no abuse of position by him, to cause wrongful gain for himself or wrongful gain for anyone else. It was submitted that the reliance placed on clause 7.31.1 of the Manual, was

misplaced as that provision stipulated that test checks of 10% of the measurement recorded by Junior Officers in every alternate bill for works in his headquarters had to be undertaken. It was contended that the amounts were released by the petitioner in good faith on the strength of the verification by the subordinate officers, all of whom unequivocally stated that the contract had been duly performed. The bill which was approved was merely a running bill and in these circumstances, barring release of the amount, there was no involvement of the petitioner, justifying framing of a charge.

5. The relevant clause of the CPWD on which reliance has been placed reads as follows :-

> "*The EE should test check 10% of the measurements recorded by his subordinate at least every alternate bill for works at his headquarter and at least every third bill for works outside his headquarter. In respect of final payment of works costing up to Rs. 1(one) lakh at places outside the headquarters of a Division and in the case of works costing up to Rs. 40,000/- at the headquarters of the Division, the EE may, in his discretion, authorize payment without any test check by him. He will, however, have to accept general responsibility for the correctness of the bill as a whole."*

6. In this case the test check statement was prepared on 12.6.2006, verifying that 647 trips had been undertaken, in support of a bill for Rs. 5,07,120/-. Undeniably the petitioner cleared it. It later on transpired that only 118 of the 647 trips for which the bills could be verified and found genuine, were actually accounted for. The prosecution case is that the rest were fraudulent claims.

7. The main argument is that the petitioner was under no compulsion to verify the bills

and could accept the version of his subordinates. In a case which involves fraud and cheating of this nature, where public monies are sought to be siphoned off on the basis of fabricated claims, the doubt raised by the defence has to be *prima facie* convincing. The petitioner as Executive Engineer undoubtedly in charge of the work, even as per the condition relied upon by him has to bear overall responsibility. His explanation that the subordinate officers were parties to the criminal conspiracy and that he was innocent might well be true. Yet at the charge framing stage, it cannot be said that the materials as existing did not point to grave suspicion.

8. Having regard to the conspectus of the facts as well as the materials on record I am unpersuaded that the order of the trial court framing the charges against the petitioners, requires to be interfered with. Consequently, the petition fails and is dismissed.

(S. RAVINDRA BHAT)
JUDGE

APRIL 23,2007
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